THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19811 of 1996

Date: 22 .08.2007

Between:
V.V.Sastry

… Petitioner

AND

A.P.Vikalangula Cooperative Corporation,
Rep by Managing Director, Hyderabad
And another.

… Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19811 of 1996

ORDER:-

The action of respondent No.1 in not allowing the petitioner to join in its organization on his purported completion of deputation to respondent No.1 is assailed in this writ petition.

The petitioner who approached the Managing Director of the day of respondent No.1 with a bio-data for providing employment appeared to have been treated to a red-carpet welcome by the latter resulting in his issuing proceedings dated 4.4.1991 whereby the petitioner was temporarily appointed as Junior Assistant on a consolidated pay of Rs.900/- per month. The order of appointment is hedged by two conditions which are mentioned hereunder:

> " 1. This appointment is on adhoc basis and is purely temporary and liable for termination at any time without any notice and without assigning any reasons whatsoever.
> 2. This appointment does not confer any rights on the individual for his absorption or regularization of service in the Corporation."

The petitioner is evidently posted in Training-cum-Production Centre, Ongole, Prakasham district. Barely two months after his joining the 1st respondent Corporation, he again approached the Managing Director to sanction regular time scale

of Rs.910-30-1240-35-1625 vide his letter dated 2.5.1991 and the Managing Director readily responded to his call by coming out with proceedings dated 8.5.1991 whereunder the petitioner's request for providing him with the aforementioned time scale was conceded. The petitioner, obviously realizing that respondent No.1 was a sinking boat, immediately approached the Managing Director of Respondent No.2 with a request to take him on deputation. The Managing Director of Respondent No.2 vide his proceedings dated 4.2.1991 has taken the petitioner on deputation for a period of two years. The said proceedings show that the Managing Director of respondent No.1 recommended the petitioner's case for deputation. Petitioner, vide proceedings dated 6.7.1991 of Managing Director of respondent No.2 was posted to A-1 Section for preparation of pay bills and T.A. bills etc. The petitioner thereafter managed to get his deputation extended by respondent No.2 initially by two years and later by another year upto 10.7.1996. Though the petitioner tried to rope in the Hon'ble Minister for Cooperation who has taken pains to address letters dated 26.6.1993 and 28.5.1994 (wrongly typed as 28.5.1984) to the 2nd respondent to absorb the petitioner, his efforts did not fructify. Eventually the Managing Director of respondent No.2 issued proceedings dated 10.7.1996 wherein the petitioner was repatriated and on the same day he was relieved vide separate proceedings. The petitioner claims that he approached the Managing Director of Respondent No.1 on 11.7.1996 with a joining report and a request to permit him to report to duty. The petitioner alleged that the 1st respondent declined to permit the petitioner to

report to duty and therefore he filed the present writ petition questioning the said action.

Sri S.Amruthaiah, Managing Director of respondent No.1 filed an elaborate counter affidavit. Since a short issue is involved in this writ petition all the contents of the said counter affidavit need not be adverted to and suffice it to refer to a few relevant aspects mentioned in the counter affidavit.

It is averred that since respondent No.1 is registered under the Andhra Pradesh Cooperative Societies Act 1964 (for short 'the Act'), the provisions of the said Act apply and that under Section 61 of the Act the petitioner ought to have invoked the remedy of raising a dispute before the Registrar and that therefore, the writ petition is not maintainable. The deponent of the counter affidavit was very critical of the successive Managing Directors who functioned from time to time as they appointed several persons irregularly and irrationally in total disregard of the sanctioned cadre strength. It is further averred that as against the cadre strength of 180, the indiscriminate appointments led to the strength swelling to 651. He lamented that the appointments of the persons made over and above the cadre strength of 180 were neither sanctioned nor approved by the Government as required. It is further stated that the Board of Directors of the 1st respondent passed a resolution in its 28th meeting held on 10.11.1994 to the effect that prior approval of the Government is required to be obtained for regularization of the services of the temporary employees and that pay scales should be allowed to the temporary employees who are willing to work in Training cum Production

Centres and willing to turnout minimum work prescribed by the Project Manager sufficient to earn their salaries.

In the counter affidavit a reference was made to resolution No.126 dated 16.7.1986 wherein it was decided on the basis of the recommendations made by a sub-committee, that all the daily wage workers who have completed one year of service and whose work is satisfactory should be given consolidated pay and that 1/3rd of the workers in each unit should be given regular scales of pay according to the seniority and satisfactory completion of two years of service on consolidated pay. It was further decided that those who are not recruited through the employment exchange or approved method of recruitment are not entitled to be given the regular scales unless Government gives exemption. It is also brought out in the counter affidavit that since developmental activities of respondent No.1, namely; advancement of margin money loans, providing training programmes and providing aids and appliances to the handicap have come to a grinding halt and the staff had become idle, the 1st respondent conceived a plan to revamp the whole organization and as a part of the said plan, the Corporation decided to restructure the staff so as to be within the grants released by the Government. In its Board of Directors meeting dated 19.9.1997, the Corporation resolved to fix the cadre strength to its optimum level to suit the present needs of the organization for effective implementation of the schemes meant for the handicapped and that a seniority list was prepared by the Corporation which was sent to the Government. It was further stated that the Government had directed the Corporation to restrict

the cadre strength to 246 posts and consequently nearly 407 employees who are found surplus were directed to be retrenched after following the procedure. Accordingly, the Corporation vide its proceedings dated 27.4.1998 retrenched the surplus staff by paying retrenchment compensation and other benefits. When certain retrenched persons approached this Court by filing Writ Petition No.11147 of 1998, W.P.No.21523 of 1995 and Batch the same were disposed of with a direction to the Chief Secretary to the Government to conduct an enquiry in order to regulate the cadre strength and the Government constituted a committee to make a detailed study of cases of each of the employees. In pursuance of the directions given in W.P.No.11147 of 1998 and Batch, Government issued G.O.Ms.No.28 dated 6.10.2000 whereunder the Corporation was directed to limit the cadre strength to 180 as against 246 which was earlier fixed in G.O.Ms.No.9 dated 29.1.1998.

As regards the appointment of the petitioner, it is averred in paras-8 and 9 of the counter affidavit as under:

> " It is respectfully submitted that this appointment was one of the irregular appointments made by the then Managing Director, APVCC, Sri S.Venu Gopal Rao, total violation of established recruitment rules/procedures. It is also against the specific and clear resolutions passed by the Managing Committee of the Corporation on the subject, which were very much in force, and thus leading for issue of a direction by this Hon'ble High Court in the course of hearing of W.P.No.21523 of 1995 and Batch, to the Chief Secretary to Government, to initiate disciplinary action against the officers responsible for such irregularities. Such appointments were made without availability of

sanctioned posts and without following the established procedures as already specified by the Managing Committee vide its resolutions No.s126 dated 16.7.1986 read with resolution No.250 dated 10.11.1987 on the question of regularizing the services of employees working on consolidated pay. The resolutions are extracted below:

Resolution No.126 dt.16.7.1986:

" The sub-committee on recruitment and promotion recommended that all the daily wage workers who complete one year of service and whose work is satisfactory should be given consolidated pay. They should give minimum turnover of work. If they fail to do so for the particular month they should be paid on daily wage basis only for the number of days worked as per the rate being paid now. For the number of days absent the salary should be cut. Further the sub-committee recommended that 1/3rd of the consolidated pay-workers in each unit should be given regular scales of pay according to seniority, appointment and satisfactory completion of (2) years of service on consolidated pay. Those who are not recruited through the employment exchange or approved methods of recruitment or not be given regular scales unless Government gives exemption. The recommendations of the sub-committee have been examined and agreed to."

Resolution No.250 dt.10.11.1987: (On regularization of service of Daily age Workers on consolidated pay)

" The board after careful examination resolved the procedure as laid down in resolution No.126 and stands good."

I submit that the regularisation of the services of the petitioner was in violation of the above resolutions of the Managing Committee of the Corporation, as the petitioner was not recruited as per the required procedure of being sponsored by the employment exchange nor had completed the prescribed two years period of service on consolidated pay on 4.4.1991 on his personal application

and having been allowed regular pay scale on 8.5.1991, that is within two months from the date of appointment on consolidated pay. Hence the allegations as are made in para Nos.2 to 7 contra to the above are denied.

9. I submit that the alleged action taken by the then Managing Director, APVCC t order for deputation of the petitioner to A.P. Housing Federation as desired by him, within (3) months from the alleged date of allowing regular scale, which in itself was highly irregular, was only an extension of irregularity already committed for the reason that it was not proper to order for deputation of a temporary employee. I also submit that no orders sending the petitioner on deputation were issued by the competent authorities. The petitioner is put to strict proof of the same. I may add that terming him as a temporary employee is without prejudice to the stand taken supra to the effect that allowing him scale of pay was a total violation of established procedures and resolutions of the Managing Committee of APVCC. Even a cursory examination of these paragraphs of the petitioners affidavit read with the said resolutions No.126 and 250 of the Managing Committee of APVCC clearly prove that the established norm for recruitments in public services, " Thtat no appointment of a person to public service in any capacity is permissible unless a sanctioned post is available were followed." The candidate concerned was not appointed as per the prescribed rules/procedures. This would only abundantly point to the fact that the petitioner who secured backdoor entry into APVCC was anxious to get a footing in the A.P.Housefed, another such organization, through backdoor method for the reasons that he was suspicious about the financial and administrative soundness of APVCC. Hence, the allegations as a re made in para-9 contra to the above are denied."

The petitioner has not filed any rejoinder controverting any of these allegations.

From the facts narrated hereinabove it is quite clear that the petitioner managed to enter the 1st respondent Corporation through the backdoor. It is neither the pleaded case of the petitioner nor a contention has been advanced by the learned counsel for the petitioner that he was appointed in accordance with the procedure prescribed by respondent No.1 and after going through the regular selection process. The petitioner's appointment was evidently far in excess of the approved cadre strength of the 1st respondent Corporation. From the uncontroverted facts borne out by the record the petitioner's appointment is obviously a result of an illegitimate and whimsical act of the head of the Corporation, who, if the averments in the counter affidavit are any indication, abused his official position to the hilt by making indiscriminate appointments and conferring favours on the appointees. The appointment of the petitioner without being sponsored by the employment exchange and sanction of regular pay scale barely within two months of his appointment on temporary basis is contrary to resolution No.126 dated 16.7.1986. It is not in dispute that respondent No.1 is an instrumentality of the State and being fully funded by the State. Therefore, the rigor of the constitutional provisions very much applies to it. The management at the helm of respondent No.1, unmindful of the constitutional mandate of equality before law and equal opportunities to be afforded to the citizens in the matter of public employment has obviously committed fraud on the constitution by resorting to a pick and choose method and denying public employment to the persons

who are more deserving. I have therefore no hesitation to term the petitioner's appointment as a fraud on the constitution. I am indeed at a loss to know as to how a person who was appointed purely on a temporary basis on consolidated pay to start with and immediately after the fixation of the time scale can be sent on deputation. Neither the petitioner nor the respondents have placed before me any service regulation or the bye-laws governing the service conditions of the employees of the respondent No.1 which enable it to send a temporary employee on deputation to another organization. Curiously, the proceedings of respondent No.1 under which the petitioner was purportedly sent on deputation to respondent No.2 organisation are not placed before this Court by either party.

A constitution bench of the Supreme Court in **Secretary, State of Karnataka Vs. Uma Devi**[1] while dealing with the menace of backdoor entry into the public employment and the claims for regularization held as under:

> " **26.** With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent --the distinction between regularization and making permanent, was not emphasized here --can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of Piara Singh [(1992) 4

SCC 118] is to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

In Para-45 of the judgment it was held as under:

"While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them.

> After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the constitution of India."

On a careful consideration of the case, I am of the considered view that the petitioner has no legitimate right to rejoin respondent No.1 after the so called repatriation by respondent No.2. Being the beneficiary of fraud, no rights accrued to him.

On the premise aforementioned, the writ petition fails and is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.24419 of 1996 is also dismissed.

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C.V.NAGARJUNA REDDY, J

Date: .08.2007

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[1] (2006) 4 SCC 1